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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondents: Employers  
ROD Case No: 88-587 - September 30, 1992

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee;  
William Miller, Trustee; Elliot A. Segal, Trustee.

Pursuant to Article IX of the United Mine Workers of America ("UMWA") 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning the provision of health benefits coverage for a Pensioner under the terms of the Employer Benefit Plan.

### Background Facts

The Complainant is a 1974 Pension Plan pensioner who was last employed in a classified position by Duquesne Light Company ("Duquesne") at its Warwick Mine. Duquesne was signatory to the National Bituminous Coal Wage Agreement ("NBCWA") of 1984, but did not sign the 1988 Wage Agreement. Duquesne did, however, sign two extensions of the 1984 NBCWA, the last of which expired on May 31, 1988.

In March 1990, Duquesne negotiated an "Agreement of Intent" with the UMWA which provided that a contract operator (not yet named) would operate Warwick Mine. The agreement also provided that Duquesne would withdraw from the 1974 Pension and Benefit Plans and Trusts and that on the date of withdrawal, the contract operator would begin providing life and health insurance to pensioners whose last signatory employer was Duquesne.

Duquesne sent a letter dated June 29, 1990 to the UMWA Health and Retirement Funds stating that Duquesne was withdrawing effective June 30, 1990 from the 1974 Pension and Benefit Plans and Trusts. On September 4, 1990 Duquesne signed a mining contract with New Warwick Mining Partners ("Mining Partners") to operate Warwick Mine. On September 5, 1990, Mining Partners signed an agreement with the UMWA. Article XX, Section (i)(3)(i) of New Warwick Mining Partners Bituminous Coal Wage Agreement ("Wage Agreement") of 1990 contains the following language:

After DLC [Duquesne] withdraws from the 1974 Pension Plan and Trust, the contract operator will provide life and health insurance benefits for the duration of this Agreement to 1974 retirees whose last signatory employment was with DLC at the Warwick Mine....

Article XX Section (h) of the Wage Agreement provides that:

Notwithstanding any other provisions of this Agreement the Employers hereby agree to fully guarantee the ... health benefits provided by the 1974 Benefit Fund and all other benefit plans described in Section (c) of this Article XX during the term of this Agreement to participants whose last signatory classified employment was at the Warwick mine....

Duquesne supplied Mining Partners with a list of pensioners who last worked at the Warwick Mine and on September 5, 1990, Mining Partners began providing health benefits coverage to these pensioners. As of January 1991, Mining Partners was also providing health benefits coverage to eight pensioners who last worked for Duquesne but were not included on the list. Around March 1991, Mining Partners was dissolved and New Warwick Mining Company ("New Warwick") adopted Mining Partners' obligations under its Wage Agreement.

The Complainant was awarded a 1974 Pension Plan disability pension on November 13, 1991 retroactive to July 1, 1988. The representative for the Complainant states that New Warwick and Duquesne have refused to provide health benefits coverage for the Complainant as a pensioner.

A representative for New Warwick claims that New Warwick's obligation to provide health benefits under its Wage Agreement applies only to pensioners who last worked for New Warwick and to beneficiaries that were named on the list supplied by Duquesne which did not include the Complainant. The representative further states that based on an oral agreement with Duquesne, Mining Partners specifically agreed to provide health benefits during the term of its Wage Agreement to pensioners who were receiving benefits from Duquesne as of September 4, 1990, the date of the mining contract.

New Warwick's representative also points to the lawsuit recently filed by the Trustees of the 1974 Pension Plan and Trust against Duquesne and New Warwick in which the Trustees assert that Duquesne is still obligated to contribute to the 1974 Pension Plan and Trust. New Warwick's representative states that if Duquesne has not withdrawn from the 1974 Pension Trust, then New Warwick's obligations under the Wage Agreement have not yet arisen.

A representative for Duquesne claims that there were no oral modifications to the Wage Agreement and that the list of pensioners that it supplied to Mining Partners was not intended to limit health benefits to any specific list of pensioners but merely to identify pensioners for whom health benefits had to be in place as of September 5, 1990. The representative states that according to New Warwick's Wage Agreement, New Warwick is obligated to provide health benefits coverage for the Complainant effective September 5, 1990.

Dispute

Whether Duquesne or New Warwick is required to provide health benefits coverage for the Complainant as a Pensioner?

Positions of the Parties

Position of the Complainant: The Complainant asks whether Duquesne or New Warwick is required to provide health benefits coverage for the Complainant as a Pensioner.

Position of the Respondents: A representative for New Warwick states that New Warwick is not required to provide health benefits coverage for the Complainant because its Wage Agreement does not obligate it to provide such coverage and because the Complainant was not included on Duquesne's list of pensioners for which New Warwick agreed to provide health benefits. Furthermore, based on the lawsuit filed by the Trustees against Duquesne and New Warwick, New Warwick's obligations under the Wage Agreement has not yet arisen if Duquesne has not withdrawn from the 1974 Pension Trust.

A representative for Duquesne states that according to New Warwick's Wage Agreement, New Warwick is obligated to provide health benefits coverage for the Complainant effective September 5, 1990.

Pertinent Provisions

Article XX Section (c)(3)(i) of New Warwick Mining Partners Bituminous Coal Wage Agreement of 1990 provides:

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last signatory classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. The plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

Article XX Section (h) of New Warwick Mining Partners Bituminous Coal Wage Agreement of 1990 provides in pertinent part:

Notwithstanding any other provisions of this Agreement the Employers hereby agree to fully guarantee the pension and health benefits provided by the . . . 1974 Benefit Fund and all other benefit plans described in Section (c) of this Article XX during the term of this Agreement to participants whose last signatory classified employment was at the Warwick mine, the Employer's guarantee shall be limited to the proportionate share of the attributable [sic] to such Employee.

Article I (1), (2) and (5) of the Employer Benefit Plan provide:

#### Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (Employer's Name).
- (2) "Wage Agreement" means the New Warwick Mining Partners Bituminous Coal Wage Agreement of 1990, as amended from time to time and any successor agreement.
- (5) "Pensioner" shall mean any person who is receiving a pension, other than (i) a deferred vested pension based on less than 20 years of credited service, or (ii) a pension based in whole or in part on years of service credited under the terms of Article II & of the 1974 Pension Plan, or any corresponding paragraph of any successor thereto, under the 1974 Pension Plan (or any successor thereto), whose last classified signatory employment was with the Employer, subject to the provisions of Article II B of this Plan.

Article II. B. (1) of the Employer Benefit Plan provides:

#### Article II - Eligibility

The persons eligible to receive the health benefits pursuant to Article III are as follows:

##### B. Pensioners

Health benefits and life insurance under Article III hereof shall be provided to Pensioners as follows:

- (1) Any Pensioner who is not again employed in classified signatory employment subsequent to

- (a) such Pensioner's initial date of retirement under the 1974 Pension Plan, and
- (b) February 1, 1988, shall be eligible for coverage as a Pensioner under, and subject to all other provisions of this Plan. Notwithstanding (i) and (ii) of the definition of Pensioner in Article 1(5) of this Plan, any such Pensioner who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, shall be eligible for such benefits, subject to all other provisions of this Plan.

### Discussion

The Complainant is a 1974 Pension Plan pensioner who was last employed by Duquesne at its Warwick Mine. New Warwick is signatory to a Wage Agreement with the UMW, the term of which began on September 5, 1990. In this agreement New Warwick agreed to "[n]otwithstanding any other provisions of this Agreement ... fully guarantee the pension and health benefits provided by the ... 1974 Benefit Fund and all other benefit plans described in Section (c) of this Article XX during the term of this Agreement to participants whose last signatory classified employment was at the Warwick mine". (Article XX, Section (h), emphasis added). Therefore, New Warwick's obligation to provide benefits to the Complainant is not limited by the Article XX (i) language in the Agreement, which states that the obligation begins "[a]fter DLC withdraws" from the 1974 Pension Trust, because New Warwick undertook to provide benefits during the term of the Agreement notwithstanding any other provision of the Agreement.

New Warwick argues that, even if it is obligated to provide benefits to certain Duquesne retirees, it is not obligated to provide benefits to the Complainant, because he was not on the list of beneficiaries that was given to New Warwick by Duquesne. New Warwick claims that there was an oral agreement between Duquesne and New Warwick that New Warwick was responsible for health benefit coverage only for those beneficiaries who were specifically named on lists provided by Duquesne. Duquesne denies that they entered into any such oral modification of the contract. Duquesne points out that the written agreement controls, and explains that the lists of beneficiaries provided by Duquesne act not as limits upon New Warwick's undertaking but as information concerning those to begin receiving benefits in September 1990.

The written agreement must govern. The contract language is unambiguous as to the class of persons covered and is supported by the fact that New Warwick is providing benefits to eight other Duquesne retirees who were not on the list of eligible beneficiaries originally provided to New Warwick.

### Opinion of the Trustees

The Respondent, New Warwick, is responsible for providing health benefits coverage for the Complainant.

